

# 14

By making deductible donations, you help your favorite philanthropy and at the same time receive a tax benefit. Donations to organizations qualified to receive deductible contributions give you a tax reduction if you itemize deductions. For example, if you are in the 28% tax bracket, a donation of \$1,000 reduces your taxes by \$280. By donating appreciated securities and real estate held long term, you can increase the amount of your tax savings by avoiding the tax that would have been owed if you had sold the property and donated the proceeds. If you do volunteer work for a qualified charity, you may deduct your unreimbursed expenses.

If you contributed at least \$250 to a charity in 1996, you must get a written receipt from the organization to substantiate the donation. A cancelled check is not sufficient evidence for a cash donation of \$250 or more; see ¶14.15.

Also be aware that if you claim deductions for property valued at more than \$500, you must attach Form 8283 to Form 1040. If the value you claimed exceeds \$5,000, you also may have to obtain a written appraisal.

There are deduction ceilings depending on the type of donation and the nature of the charity. The ceiling for cash donations made to public philanthropies is 50% of adjusted gross income, and for gifts of capital gain property, 30% of adjusted gross income. For other ceilings, see ¶14.17.

If your adjusted gross income exceeds \$117,950 (\$58,975 if married filing separately), your charitable contribution deduction is subject to the 3% reduction of itemized deductions explained in ¶13.8.

## Charitable Contribution Deductions

*See ¶*

Deductible Contributions	14.1
Nondeductible Contributions	14.2
Contributions That Provide You With Benefits	14.3
Unreimbursed Expenses of Volunteer Workers	14.4
Support of a Student in Your Home	14.5
What Kind of Property Are You Donating?	14.6
Property That Has Declined Below Cost	14.7
Bargain Sales of Appreciated Property	14.8
Art Objects	14.9
Interests in Real Estate	14.10
Life Insurance	14.11
Form 8283 and Written Appraisal Requirements	14.12
Business Inventory	14.13
Donations Through Trusts	14.14
Records Needed to Substantiate Your Contributions	14.15
Penalty for Substantial Overvaluation of Property	14.16
Ceiling on Charitable Deductions	14.17
Five-Year Carryover for Excess Donations	14.18
Election To Reduce Property Gift Appreciation	14.19

## ¶14.1 Deductible Contributions

Charitable contributions are deductible only as itemized deductions on Schedule A of Form 1040. The deduction is subject to the 3% reduction of total itemized deductions explained at ¶13.8 if your adjusted gross income exceeds \$117,950 (\$58,975 if married filing separately).

You may deduct donations to religious, charitable, educational, and other philanthropic organizations approved by the IRS to receive deductible contributions; *see* the listing later in this section. If you are unsure of the tax status of a philanthropy, ask the organization about its status, or check the IRS list of tax-exempt organizations (IRS Publication 78). Donations to the federal, state, and local government are also deductible.

**Substantiating your donations.** Keep a cancelled check or receipt from the charity as proof of donations under \$250. For donations of \$250 or more, you need to obtain a written acknowledgment that notes any benefits or goods that you received in exchange. *See* ¶14.15 for details on the substantiation requirements.

**Year-end donations.** You deduct donations on the tax return filed for the year in which you paid them in cash or property. A contribution by check is deductible in the year you give the check, even if it is cashed in the following year. A check mailed and dated on the last day of 1996 is deductible in 1996. A postdated check with a 1997 date is not deductible until 1997. For checks of \$250 or more, get a written receipt by the filing due date of your return. A pledge or a note is not deductible until paid. Donations made through a credit card are deductible in the year the charge is made. Donations made through a pay-by-phone bank account are not deductible until the payment date shown on the bank statement.

**Delivering securities.** If you are planning to donate appreciated securities near the end of the year, make sure that you consider these delivery rules in timing the donation. If you unconditionally deliver or mail a properly endorsed stock certificate to the donee or its agent, the gift is considered completed on the date of delivery or mailing, provided it is received in the ordinary course of the mails. If you deliver the certificate to your bank or broker as your agent, or to the issuing corporation or its agent, your gift is not complete until the stock is transferred to the donee's name on the corporation's books. This transfer may take several weeks, so, if possible, make the delivery at least three weeks before the end of the year to assure a current deduction.

**Debts.** You may assign to a charity a debt payable to you. A deductible contribution may be claimed in the year your debtor pays the charity.

**Limits on deduction.** Depending on the nature of the organization and the donated property, a deduction ceiling of 50%, 30%, or 20% of adjusted gross income applies. In general, the deduction ceiling is 50% for cash contributions and 30% for contributions of

appreciated property held long term. *See* ¶14.17 for details on the deduction ceilings. Where donations in one year exceed the percentage limits, a five-year carryover of the excess may be allowed; *see* ¶14.18.

A deduction may also be limited under the 3% reduction rule discussed at ¶13.8.

### ORGANIZATIONS QUALIFYING FOR DEDUCTIBLE DONATIONS

The following types of organizations may qualify to receive deductible contributions:

**The United States, a U.S. possession, a state, city, or town or Indian tribal government.** The gift must be for public purposes. The gift may be directed to a government unit, or it may be to a government agency such as a state university, a fire department, a civil defense group, or a committee to raise funds to develop land into a public park. Donations may be made to the Social Security system (Federal Old Age and Survivors Insurance Trust Fund). Donations may be made to the federal government to help reduce the national debt; checks should be made payable to "Bureau of the Public Debt."

**A domestic nonprofit organization, trust, community chest, fund, or foundation that is operated exclusively for one of the following purposes—**

**Religious.** Payments for pew rents, assessments, and dues to churches and synagogues are deductible.

**Charitable.** In this class are organizations such as Boy Scouts, Girl Scouts, American Red Cross, Community Funds, Cancer Societies, CARE, Salvation Army, Y.M.C.A., and Y.W.C.A.

**Scientific, literary, and educational.** Included in this group are hospitals, research organizations, colleges, universities, and other schools that do not maintain racially discriminatory policies; and leagues or associations set up for education or to combat crime, improve public morals, and aid public welfare.

**Prevention of cruelty to children or animals.**

**Fostering amateur sports competition.** However, the organization's activities may not provide athletic facilities or equipment.

**Domestic nonprofit veterans' organizations or auxiliary units.**

**A domestic fraternal group operating under the lodge system.**

The contributions must be used exclusively for religious, charitable, scientific, literary, or educational purposes; or for the prevention of cruelty to children or animals.

**Nonprofit cemetery and burial companies, where the voluntary contribution benefits the whole cemetery, not only your plot.**

**Legal services corporations established under the Legal Services Corporation Act.** Such corporations provide legal assistance to financially needy people in noncriminal proceedings.



## Foreign Charities

You may deduct donations to domestic organizations that distribute funds to charities in foreign countries, as long as the U.S. organization controls the distribution of the funds overseas. An outright contribution to a foreign charitable organization is not deductible. Some exceptions to this ban are provided by international treaties. A limited exception applies to contributions to certain Canadian or Mexican organizations if you have income from Canadian or Mexican sources. For details, write IRS, Assistant Commissioner International, 950 L'Enfant Plaza, S.W., Washington, D.C. 20024.

## ¶14.2 Nondeductible Contributions

The following types of contributions are not deductible:

1. Payments to political campaign committees or political action committees.
2. Payments to an organization that devotes a substantial part of its activities to lobbying, trying to influence legislation, or carrying on propaganda or whose lobbying activities exceed certain limits set by the law, causing the organization to lose its tax-exempt status. The IRS has disallowed contributions to a civic group opposing saloons, nightclubs, and gambling places, although the group also aided libraries, churches, and other public programs.
3. Donations to or on behalf of specific individuals, even if needy or worthy. Generally, scholarships for specific students, or gifts to organizations to benefit only certain groups. However, the IRS in private rulings has allowed deductions for scholarship funds which are limited to members of a particular religion, so long as that religion is open to all on a racially nondiscriminatory basis, and to scholarship funds open only to male students.
4. Gifts to organizations such as—

Fraternal groups—except when they set up special organizations exclusively devoted to charitable, educational, or other approved purposes.

Professional groups such as those organized by accountants, lawyers, and physicians—except when they are specially created for exclusive charitable, educational, or other philanthropic purposes. The IRS will disallow unrestricted gifts made to state bar associations, although such organizations may have some public purposes. Some courts have allowed deductions for donations to bar associations on the ground that their activities benefit the general public. However, an appeals court disallowed deductible donations to a bar association that rates candidates for judicial office.

Clubs for social purposes—fraternities and sororities are generally in this class. Unless an organization is exclusively operated for a charitable, religious, or other approved purpose, you may not deduct your contribution, even though your funds are used for a charitable or religious purpose.

5. Donations to civic leagues, communist or communist-front organizations, chambers of commerce, business leagues, or labor unions.
6. Contributions to a hospital or school operated for profit.
7. Purchase price of church building bond. To claim a deduction, you must donate the bond to the church. The amount of the deduction is the fair market value of the bond when you make the donation. Interest on the bond is income each year, under the original issue discount rules of ¶4.19, where no interest will be paid until the bond matures.
8. Donations of blood to the Red Cross or other blood banks.
9. Contributions to foreign charitable organizations or directly to foreign governments. Thus, a contribution to the State of Israel was disallowed. Similarly, contributions to international charitable organizations are nondeductible; but see ¶14.1.

**Donation of services.** You may not deduct the value of volunteer work you perform for charities. But you can deduct unreimbursed expenses incurred during such work; see ¶14.4.



## Donations Which Provide You with Goods or Services

Except for certain token benefits and memberships which are disregarded for tax purposes, you may not deduct a contribution to a qualified charity to the extent that you receive goods, services, or financial benefits in exchange; see ¶14.3.

You may not deduct tuition payments to a parochial or other church-sponsored school for the education of your children if secular courses that lead to a recognized degree are provided. Payments exceeding the usual tuition charge are deductible. Similarly, fees paid to a tax-exempt rest home in which you live, or to a hospital for the care of a particular patient, are not deductible if any benefit is received from the contribution. A gift to a retirement home, over and above monthly fees, is not deductible if the size or type of your quarters depends on the gift.

**Free use of property.** You may not deduct the rental value of property you allow a charity to use without charge. That is, if you allow a charity rent-free use of an office in your building, you may not deduct the fair rental value. You also have no deduction when you lend money to a charity without charging interest.

To raise money for a charity, supporters of the organization may donate rental time for their vacation home, to be auctioned off to the public. No deduction is allowed for donating the rental time; see ¶14.10.

**Parents' support payments of children serving as Mormon missionaries.** According to the Supreme Court, support payments made by parents directly to their children who serve as missionaries are not deductible because the church does not control the funds.

## ¶14.3 Contributions That Provide You With Benefits

A contribution to a qualifying organization (¶14.1) is generally deductible only to the extent it exceeds the value of benefits you receive by making the donation. However, as discussed later in this section, certain token items and membership benefits do not reduce the amount of your deduction.

If you contribute \$75 or less and receive benefits, the organization may tell you the value of the benefits. If your contribution exceeds \$75, the organization by law *must* give you a written statement that estimates the value of the benefits provided to you and instructs you to deduct only the portion of your contribution that exceeds the benefits. However, the disclosure statement does not have to be provided to you if you receive only token benefits, or if you receive from a religious organization only "intangible religious benefits."

**Dues.** Dues paid to a qualified tax-exempt organization are deductible to the extent they exceed the value of benefits or privileges from the organization for the dues, such as monthly bulletins or journals, use of a library, or the right to attend luncheons and lectures. As discussed above, you generally must be provided with an estimate of any benefits you received if your donation exceeds \$75; see ¶14.3.

If dues are paid to a social club with the understanding that a specified part goes to a qualifying charity (¶14.1), you may claim a charitable deduction for dues earmarked for the charity. If the treasurer of your club is actually the agent of the charity, you take the deduction in the year you give him or her the money. If the treasurer is merely your agent, you may take the deduction only in the year the money is turned over to the charity.

**Benefit tickets.** Tickets to theater events, tours, concerts, and other entertainments are often sold by charitable organizations at prices higher than the regular admission charge. The difference between the regular admission and the higher amount you pay is deductible as a charitable contribution. If you decline to accept the ticket or return it to the charity for resale, your deduction is the price you paid.

The charity should explain to you how much is deductible. The charity must provide an explanation where you paid more than \$75; see above.

If the benefit ticket price is the same or less than the regular admission price, you have no deduction unless you refuse to accept the ticket or you return the ticket to the charity for resale.

If you purchase season tickets to a charity-sponsored series of programs and your average cost per program equals or is less than the cost for individual performances, your deduction for a returned

ticket depends upon how long you held the tickets. Generally, you may deduct only your cost. However, if you have held the ticket for more than a year, you may deduct the fair market value, the price the charity will charge on resale of the ticket.

You may not deduct the cost of raffle tickets, bingo games, or other types of lotteries organized by charities.

### E X A M P L E

A couple claimed a full deduction for regular-price tickets to a high-school fund-raising event that they did not attend. They argued that they were entitled to the deduction because they received no benefit from their ticket purchase. The IRS disallowed the deduction and the Tax Court agreed, holding that a donor receives a benefit by merely having the right to attend the event. To claim a deduction for the price of the tickets the couple should have returned them to the charity.

**Donation for the right to buy athletic stadium tickets.** If you contribute to a public or nonprofit college or university scholarship program and receive the right to buy preferential seating at the school's football stadium or other sports arena, you may deduct 80% of the contribution to the scholarship program. The cost of any tickets you buy is not deductible. The deduction is allowed only if you receive the right to buy tickets rather than tickets themselves. For example, if in exchange for a substantial donation you receive a lifetime season ticket, no deduction is allowed.

### TOKEN ITEMS AND MEMBERSHIP BENEFITS THAT DO NOT REDUCE YOUR DEDUCTION

**Token items.** Popular fund-raising campaigns, such as those for museums, zoos, and public TV, offer token items such as calendars, tote bags, tee shirts, and other items carrying the organization's logo. You are allowed a full deduction for your contribution if the item is considered to be of insubstantial value under IRS guidelines.

The charity must tell you how much of your contribution is deductible in the solicitation that offers the token item. If the items are insubstantial in value, the charity should tell you that your payment is fully deductible. For example, if in 1996 you contributed at least \$33.50, and the offered items cost the charity no more than \$6.70, the value of the benefits is ignored and a full 1996 deduction is allowed. A full deduction for 1996 is also allowed if the items were worth no more than 2% of the contribution, or \$67, whichever was less. The \$33.50, \$6.70, and \$67 amounts change annually for inflation.

Newsletters or program guides that are not of commercial quality are treated as token items having no fair market value or cost if their primary purpose is to inform members about the organization's activities, and they are not available to nonmembers by paid subscription or through newsstand sales.

Publications with articles written for compensation and advertising are treated as commercial-quality publications for which the organization must figure value to determine if a full deduction is allowed under the "insubstantial value" test. Professional journals, whether or not they have such articles and advertising, will generally be treated as commercial-quality publications that must be valued.

**Membership benefits.** If you contribute \$75 or less for an annual membership in a qualified charity (see ¶14.1) you may deduct your entire payment under IRS guidelines provided either of the following is true:

1. You receive membership privileges that can be exercised frequently, such as free or discounted parking or admission, or discounts on gift shop or mail order merchandise, *or*
2. Your membership entitles you to admission to events that are open only to members and the organization's reasonably projected cost per person for each event excluding overhead (as of the time the membership package is offered) is no more than the annual limit for "low cost articles." For 1996, the "low cost article" limit is \$6.70.

If you pay more than \$75 for a membership package, the IRS allows you and the organization to disregard the benefits available under a \$75-or-less package.

the cost of gas and oil, in addition to tolls and parking fees. You may not deduct repairs, depreciation, or insurance costs.

#### E X A M P L E

Jill Patton is a volunteer worker for a philanthropy. In the course of her volunteer work, she drove her car approximately 1,000 miles. She may claim a contribution deduction of \$120, plus tolls and parking.

Also deductible as charitable contributions are:

Uniform costs required in serving the organization.

Cost of telephone calls, and cost of materials and supplies you furnished such as stamps or stationery.

Travel expenses, including meals and lodging on overnight trips away from home as an official delegate to a convention of a church, charitable, veteran, or other similar organization. If you are a member but not a delegate, you may not deduct travel costs, but you may deduct expenses paid for the benefit of your organization at the convention.

The IRS does not allow a deduction for "babysitting" expenses of charity volunteer workers. Although incurred to make the volunteer work possible, babysitting costs are a nondeductible personal expense. Furthermore, the expense is not a dependent care cost; it is not related to a paying job.

**Foster parent expenses.** If you receive payments from a state agency to reimburse you for the costs of caring for a foster child in your home, and you can show that your support costs exceed the reimbursements, the excess is deductible as a charitable contribution. Keep detailed records to substantiate your support payments.

**Recreational purposes may bar travel expense deduction.** To claim a charitable deduction for travel expenses of a research project for a charitable organization, you must show the trip had no significant element of personal pleasure, recreation, or vacation.

#### E X A M P L E S

1. Al Jones sails from one Caribbean island to another and spends eight hours a day counting whales and other forms of marine life as part of a project sponsored by a charitable organization. According to the IRS, he may not claim a charitable deduction for the cost of the trip.
2. Sara Smith works on an archaeological excavation sponsored by a charitable organization for several hours each morning, with the rest of the day free for recreation and sightseeing. According to the IRS, she may not deduct the cost of the trip.
3. Myra Scott, a member of a chapter of a local charitable organization, travels to New York City and spends the entire day at the required regional meeting. According to the IRS, she may deduct her expenses as a charitable donation, even if she attends a theater in the evening.

## ¶14.4 Unreimbursed Expenses of Volunteer Workers

If you work without pay for an organization listed at ¶14.1, you may deduct as charitable contributions your unreimbursed expenses in providing the services. This includes commuting expenses to and from its place of operations, and meals and lodging on a trip away from home for the organization.

To qualify for the deduction, the expenses must be incurred for a domestic organization which authorizes you to travel. You may not deduct the value of your donated services.

Keep records, such as cancelled checks, to substantiate the amount of your out-of-pocket expenses. To deduct an unreimbursed expense of \$250 or more, such as for a plane ticket or a luncheon you hosted on behalf of the organization, IRS proposed regulations require that for each such expense, a statement be obtained from the charitable organization that acknowledges the services you provide. The acknowledgment must date and describe the services, and state whether you were provided any goods or services by the charity. If so, an estimate of their value must be given unless the benefits are "intangible religious benefits." The acknowledgment must be obtained by the date you file your return, but if you file after the April 15 due date (or extended due date if you get an extension), the acknowledgment must be obtained by the due date of your return including extensions.

**Deductible expenses.** If you use your car in providing volunteer services for a charity, you may deduct either the actual operating costs of your car or a flat mileage rate of 12¢ a mile allowed by the IRS. Parking fees and tolls are deductible under both methods.

The 12¢-a-mile deduction rate is not mandatory. If your out-of-pocket expenses are greater, you may deduct your actual costs of operating the automobile exclusively for charitable work, such as

## ¶14.5 Support of a Student in Your Home

A limited charitable deduction is allowed for support of an elementary or high school student in your home under an educational program arranged by a charitable organization. If the student is not a relative or your dependent, you may deduct as a charitable contribution your support payments up to \$50 for each month the student stays in your home. For this purpose, 15 days or more of a calendar month is considered a full month. You may not deduct any payments received from the charitable organization if any reimbursements are received for the student's maintenance. The only exception is that if you prepay a "one-time" expense such as a hospital bill or vacation for the child at the request of the child's parents or the sponsoring charity, and you are later reimbursed, you may deduct your unreimbursed expenses.

To support the deduction, be prepared to show a written agreement between you and the organization relating to the support arrangement. Keep records of amounts spent for such items as food, clothing, medical and dental care, tuition, books, and recreation in order to substantiate your deduction. No deduction is allowed for depreciation on your house.

## ¶14.6 What Kind of Property Are You Donating?

The tax law does not treat all donations of appreciated property in the same way. Whether the full amount of the fair market value of the property is deductible depends on the type of property donated, your holding period, the nature of the philanthropy, and the use to which the property is put by the philanthropy.

Save records to support the market value and cost of donated property. Get a receipt or letter from the charitable organization acknowledging and describing the gift. You *must* get a receipt for donations of property valued over \$250; *see* ¶14.15. Lack of substantiation may disqualify an otherwise valid deduction. Furthermore, if the total claimed value of your 1996 property donations exceeds \$500, you must report the donation on Form 8283, which you attach to Schedule A, Form 1040. *See also* ¶14.12 for when you need an appraisal of the value of the property.

**Figuring value.** When donating securities listed on a public exchange, fair market value is readily ascertainable from newspaper listings of stock prices. It is the average of the high and low sales price on the date of the donation.

To value other property, such as real estate or works of art, you will need the services of an experienced appraiser. Fees paid to an appraiser are not deductible as a charitable contribution, but rather

as a miscellaneous itemized deduction (¶19.25) subject to the 2% adjusted gross income floor.

**Fair market value deductible for intangible personal property (such as securities) and real estate held long term.** Fair market value is deductible where you have held such property for more than one year and you give it to a publicly supported charity or to a private foundation that qualifies as a 50% limit organization, but you may not deduct more than 30% of adjusted gross income as discussed at ¶14.17. A five-year carryover for the excess is allowed; *see* ¶14.18. If the donation exceeds the 30% ceiling, you may consider a special election which allows you to apply the 50% ceiling; *see* ¶14.19.

A contribution of appreciated securities or real estate held long term has two tax advantages that reduce the real cost of making the contribution:

1. Your taxes are reduced by the deduction of the fair market value of the property. For example, you donate appreciated stock which is selling at \$1,000. You are in the 28% tax bracket. The deduction for the donation reduces your taxes by \$280.
2. You avoid the tax you would have paid on a sale of the stock. Assume that your cost for the stock was \$400. On a sale at \$1,000, you would pay tax of \$168 (28% of \$600 profit). By donating the stock, you save that \$168 plus the \$280 in tax reduction from the \$1,000 deduction, for a total tax savings of \$448. Your "cost" for donating the \$1,000 asset is \$552 (\$1,000 – \$448).

The IRS ruled that you may not claim a deduction on donated stock if you retain the voting rights, even though the charity has the right to receive dividends and sell the stock. The right to vote is considered a substantial interest and is crucial in protecting a stockholder's financial interest.

If planning a year-end donation of securities, keep in mind that the gift is generally not considered complete until the properly endorsed securities are mailed or delivered to the charity or its agent; *see* ¶14.1.

**Deduction limited to cost for property held for one year or less and other ordinary income property.** This is property which, if sold by you at its fair market value, would not result in long-term capital gain. The deduction for donations of this kind is restricted to your cost for the property. Examples of ordinary income property include: stock and other capital assets held by you for one year or less, inventory items donated by business, farm crops, Section 306 stock (preferred stock received as a tax-free stock dividend, usually in a closely held corporation), and works of art, books, letters, and memoranda donated by the person who prepared or created them. *See* ¶14.9 for art objects. For example, a former Congressman claimed a charitable deduction for the donation of his papers. His deduction was disallowed. His papers were ordinary income property, and since his cost basis in the papers was zero, he could claim no deduction.

**E X A M P L E**

Bob James holds short-term stock which cost him \$1,000. It is now worth \$1,500. If he donates it to a philanthropy, his deduction would be limited to \$1,000. He would get no tax benefit for the appreciation of \$500. On the other hand, if the stock were held long-term, he could claim a deduction for the full market value of the stock on its donation.

**Tangible personal property held long term.** Items such as furniture, books, equipment, fixtures (severed from realty), jewelry, and art objects are tangible personal property. When held for more than one year, deductions for donations of this type of asset may be subject to restrictions which will limit your deduction to cost basis. If the philanthropy to which you donate the property does *not* put it to a use that is related to its tax-exempt charitable function, the deduction must be reduced by the amount of long-term capital gain that would have been realized if the property had been sold at fair market value. If the charity must sell your gift to obtain cash for its exempt purposes, your donation is treated as being put to a *nonrelated* use by the charity, and your deduction must be reduced by the long-term gain element.

If the donation of tangible personal property is to a 50% deduction limit organization such as a church or college, and you must reduce the deduction as a *nonrelated* gift, the reduced gift is then subject to the 50% annual deduction ceiling of ¶14.17. If the organization's use of the property is *related* to its tax-exempt charitable purposes, and it is a 50% limit organization, you may deduct the property's fair market value subject to the 30% of adjusted gross income deduction ceiling; *see* ¶14.17. Alternatively, you may elect to deduct up to 50% of adjusted gross income by reducing the deduction by the long-term gain; *see* ¶14.19.

**E X A M P L E**

You contribute a painting held long term to a college that displays it in a library where art students may study it. The college's use of the painting is related to its tax-exempt educational purposes and you may deduct fair market value. However, if the college sold the painting and used the proceeds for educational purposes, its use would be treated as nonrelated, and you would have to reduce your deduction by the long-term capital gain element. However, if on the date of the donation you could reasonably anticipate that the painting would not be sold (or put to another nonrelated use), you may deduct fair market value, even if it is in fact sold at a later date.

**Donating mortgaged property.** A donation of mortgaged property may be taxable. Before you give mortgaged property to a charity, have an attorney review the transaction. You may deduct the excess of fair market value over the amount of the outstanding mortgage. However, you may realize a taxable gain. The IRS and Tax Court treat the transferred mortgage debt as cash received in a part-gift, part-sale subject to the bargain-sale rules discussed at ¶14.8. You will realize a taxable gain if the transferred mortgage exceeds the portion of basis allocated to the sale part of the transaction. This is true even if the charity does not assume the mortgage.

**E X A M P L E**

Bob Hill donates to a college land held long-term which is worth \$250,000 and subject to a \$100,000 mortgage. His basis is \$150,000. Hill's charitable contribution deduction is \$150,000 (\$250,000 – \$100,000). He also is considered to have made a bargain sale for \$100,000 (transferred mortgage debt) on which he realized \$40,000 long-term capital gain. 40% of the transaction is treated as a bargain sale:

$$\frac{\$100,000 \text{ (amount of mortgage)}}{\$250,000 \text{ (fair market value)}} = 40\%$$

Basis allocated to sale: 40% of \$150,000, or \$60,000

Amount realized	\$100,000
Allocated basis	<u>60,000</u>
Gain	\$ 40,000

**Donating capital gain property to private non-operating foundations.** You generally may not deduct the full fair market value of gifts of capital gain property to private non-operating foundations that are subject to the 20% deduction ceiling for *non*-50% limit organizations discussed at ¶14.17. (Capital gain property is property which, if sold by you at fair market value, would result in long-term capital gain.) The deduction must be reduced by the long-term gain that would have been realized if the property had been sold at fair market value. In other words, your deduction is limited to your cost basis.

An exception is available for certain contributions of stock to a private non-operating foundation; *see* the following Law Alert.

**Stock Donation to Private Foundation**

Under a law that expired at the end of 1994, a deduction for fair market value was allowed on a donation to a non-operating private foundation of appreciated publicly traded stock held long term. A new law revives the deduction for fair market value, but only for contributions made after June 30, 1996, and before June 1, 1997. If you or family members donate more than 10% of any corporation's stock, the fair market value deduction is allowed only for the first 10%.

The deduction is limited to cost on a stock donation after 1994 and before July 1, 1996.

**U.S. Saving Bonds.** You may not donate U.S. Saving Bonds, such as EE bonds, because you may not transfer them. They are non-negotiable. You must first cash the bonds and then give the proceeds to the charity, or surrender the bonds and have new ones registered in the donee's name. When you do this, you have to report the accrued interest on your tax return. Of course, you will get a charitable deduction for the cash gift.

**Gift of installment obligations.** You may deduct your donation of installment notes to a qualified philanthropy. However, if you received them on your sale of property which you reported on the installment basis, you may realize gain or loss on the gift of the notes; *see* ¶5.32. The amount of the contribution is the fair market value of the obligation, not the face amount of the notes.

## ¶14.7 Property That Has Declined Below Cost

Unless the charity needs the property for its own use, you should not donate business or investment property whose value has declined below your cost. You may not claim a deductible loss when you make a gift. When the property is held for investment or business purposes, you may get the loss deduction by first selling the property and then a charitable deduction by donating the cash proceeds of the sale.

### EXAMPLE

Betty Dunn owns securities which cost \$20,000 several years ago but which have declined in value to \$5,000. A donation of these securities gives a charitable contribution of \$5,000. But selling the securities for \$5,000 to make a cash donation provides a long-term capital loss of \$15,000.

If the property is a personal asset such as clothing or an automobile, you may not deduct a loss on the sale. It makes no difference whether you sell the property and donate the sales proceeds or donate the property.

**Used clothing or furniture.** If you donate used clothing, furniture, or household appliances, deduct their fair market value, which is usually much less than your original cost. For your records, get a statement from the donee organization acknowledging the gift and describing the property. Also keep a record of your original cost. If the claimed value of your 1996 donation exceeds \$500, you must complete Form 8283; *see* ¶14.12. For each individual contribution with a claimed value of \$250 or more, you must get a receipt as explained in ¶14.15.

## ¶14.8 Bargain Sales of Appreciated Property

A sale of appreciated property to a philanthropy for less than fair market value allows you to claim a charitable deduction while receiving proceeds from the sale. However, you must pay a tax on part of the gain attributed to the sale. That is, the transaction is broken down into two parts: the sale and the gift.

To compute gain on the sale, you allocate the adjusted basis of the property between the sale and the gift following these steps:

**Step 1.** Divide the sales proceeds by the fair market value of the property. If the property is mortgaged, include the outstanding debt as sale proceeds.

**Step 2.** Apply the Step 1 percentage to the adjusted basis of the property. This is the portion of basis allocated to the sale.

**Step 3.** Deduct the resulting basis of Step 2 from the sales proceeds to find the gain.

You may deduct the donated appreciation if full market value would be deductible on a straight donation (no sale) under the rules of ¶14.6. Thus, the donated appreciation is deductible if the property is securities or real estate held long term, or long-term tangible personal property related to the charity's exempt function; *see* Example 1 below. However, if a deduction for the property (assuming no sale) would be reduced to cost basis under ¶14.6, your charitable deduction on the sale is also reduced; *see* Example 2 below. This reduction affects sales of capital gain property held short term; ordinary income property; tangible personal property not related to the charity's exempt function; depreciable personal property subject to recapture; and sales of capital gain property to private non-operating foundations.

### EXAMPLES

1. Lana Briggs sells to a university for \$12,000 stock held long term. The adjusted basis of the stock is \$12,000, and the fair market value is \$20,000. On the sale, she recouped her investment and donated the appreciation of \$8,000, but, at the same time, she realized taxable gain of \$4,800 computed as follows: The percentage of basis applied to the sale is 60% ( $\$12,000 \text{ sale proceeds} \div \$20,000 \text{ fair market value}$ ). Thus, 60% of the \$12,000 basis, or \$7,200, is allocated to the sale. Gain on the sale equals the \$12,000 sale proceeds less the \$7,200 allocated basis, or \$4,800.
2. Joel Marx sells to his church stock held short term for his basis of \$4,000. The stock is worth \$10,000. Using the allocation method in Example 1, 40% ( $\$4,000 \text{ sale proceeds} \div \$10,000 \text{ fair market value}$ ) of his \$4,000 basis, or \$1,600, is allocated to the sale. Thus, he has a short-term capital gain of \$2,400 ( $\$4,000 \text{ sale proceeds} - \$1,600 \text{ allocated basis}$ ). Furthermore, his deductible charitable contribution is also \$2,400, equal to the 60% of basis allocated to the gift (60% of \$4,000 = \$2,400).

**Basis allocation applies even if a deduction is barred by the annual ceiling.** The basis allocation rules for determining gain on a bargain sale apply even if the annual deduction ceilings (¶14.17) bar a deduction in the year of the donation and in the five-year carryover period.

**E X A M P L E**

The Hodgdon family contributed real estate valued at \$3.9 million but subject to mortgage debt of \$2.6 million. The IRS treated the mortgage debt as sales proceeds and figured gain based on the difference between the debt and the portion of basis allocated to the sale element. The Hodgdon family claimed that the basis allocation rule, which increased the amount of their gain, should not apply. Earlier in the year, they had made another donation that used up their charitable deduction ceiling for that year as well as for the following five-year carryover period. The Tax Court held that the basis allocation rule applied because a charitable deduction was "allowable," even if the contribution did not actually result in a deduction in the carryover period.

A request for an SOV must be submitted to the IRS before filing the tax return reporting the donation. The request must include a copy of an appraisal for the item of art and a \$2,500 fee, which pays for an SOV for up to three items of art. There is an additional charge of \$250 for each item of art over three. It takes the IRS between six and 12 months to issue an SOV.

If the IRS agrees with the value reported on the appraisal, the IRS will issue an SOV approving the appraisal. If not, the IRS will issue a different SOV listing the reason it disagrees with the appraised amount. Regardless of whether you agree with the IRS appraisal, the SOV must be attached to and filed with the return reporting the donation. If you file the return before the SOV is issued, a copy of the SOV must be attached to your return and on receipt of the SOV, an amended return must be filed with the SOV attached. For further SOV details, see IRS Revenue Procedure 96-15.

**E X A M P L E S**

1. You give your college a painting which you have owned for many years. Its cost was \$100 but it is now worth \$1,000. The school displays the painting in its library for study by students. This use is related to the school's educational purposes. Your donation is deductible at fair market value. If, however, the school proposed to sell the painting and use the proceeds for general education purposes, its use would not be considered related. Your deduction would be reduced by the \$900 appreciation to \$100. That the school sells the painting does not necessarily reduce the donation if you show that, when you made the gift, it was reasonable to anticipate that your gift would not be put to such unrelated use.
2. You donate to the Community Fund a collection of first edition books held for many years and worth \$5,000. Your cost is \$1,000. Since the charity is a general fund-raising organization, its use of your gift is not related. Your deduction would be \$1,000 (\$5,000 less \$4,000).
3. You contribute to a charity antique furnishings you owned for years. The antiques cost you \$500 and are now worth \$5,000. The charity uses the furnishings in its office in the course of carrying on its functions. This is a related use. Your contribution deduction is \$5,000.

**Donating a partial interest in an art collection.** You may deduct the value of a donated partial interest in an art collection, such as where you give a museum the right to exhibit the works for a specific period during the year. The deduction is allowed even if the museum does not take possession of the art works, provided it has the right to take possession.

**Keeping a reversionary interest.** The IRS may question a charitable deduction where you do not completely relinquish control over the donated property. However, if the possibility of the property reverting back to you is considered to be remote, a deduction may be allowed. For example, a taxpayer who donated her art collection to a museum was allowed to claim a charitable deduction even though she retained the right to decide where and how the art would be dis-

## ¶14.9 Art Objects

You may claim a charitable deduction for a painting or other art object donated to a charity. The amount of the deduction depends on (1) whether you are the artist; (2) if you are not the artist, how long you owned it; and (3) the type of organization receiving the gift.

**If you are the artist,** your deduction is limited to cost regardless of how long you held the art work or to what use the charity puts it. In the case of a painting, the deduction would be the lower of either the cost for canvas and paints, or the fair market value.

**If you owned the art work short term,** your deduction is limited to cost, under the rules applying to donations of ordinary income property at ¶14.6.

**If you owned the art work long term,** your deduction depends on how the charity uses the property. If the charity uses it for its exempt purposes, you may deduct the fair market value. However, if the charity uses it for unrelated purposes, your deduction is reduced by 100% of the appreciation. A donation of art work to a general fund-raising agency would be reduced because the agency would have no direct use for it. It would have to sell the art work and use the cash for its exempt purposes.

**Appraisals.** Be prepared to support your deduction with detailed proof of cost, the date of acquisition, and how value was appraised. The appraisal fee is treated as a "miscellaneous" itemized deduction subject to the 2% adjusted gross income floor; see ¶19.25. See also ¶14.12 for appraisal requirements.

The IRS has its own art advisory panel to assess whether the fair market value claimed for donated art works is reasonable.

**Requesting advance valuation of art from IRS.** To avoid a later dispute, you may ask the IRS for an advance valuation of art that you have had appraised at \$50,000 or more. A request for an IRS Statement of Value (SOV) may be submitted for income tax, gift tax or estate tax purposes. The IRS has the discretion to value items appraised at less than \$50,000 if the SOV request includes at least one item appraised at \$50,000 or more, and the IRS determines that the valuation is in the best interest of efficient tax administration.

played. Disputes concerning art displays would be settled by a mutually acceptable museum curator. If the museum breached a condition, it had a period of time to cure the violation. If the violation was not cured, the ownership would revert back to the donor. The IRS allowed the deduction; the retained rights were fiduciary in nature and the possibility of the art reverting to the donor was so remote as to be negligible.

## ¶14.10 Interests in Real Estate

No deduction is allowable for the fair rental value of property you allow a charity to use without charge even in direct furtherance of its charitable functions as, for example, a thrift shop.

If you donate an undivided fractional part of your entire interest, a deduction will be allowed for the fair market value of the proportionate interest donated.

A donation of an option is not deductible until the year the option to buy the property is exercised.

**Remainder interest in a home or farm.** You may claim a charitable deduction for a gift of the remainder value of a residence or farm donated to a charity, even though you reserve the use of the property for yourself and your spouse for a term of years or life. Remainder gifts generally must be made in trust. However, where a residence or farm is donated, the remainder interest must be conveyed outright, not in trust. A remainder interest in a vacation home or in a “hobby” farm is also deductible. There is no requirement that the home be your principal residence or that the farm be profit-making.

**Contribution of real property for conservation purposes.** A deduction may be claimed for the contribution of certain partial interests in real property to government agencies or publicly supported charities for exclusively conservational purposes. Deductible contributions include: (1) your entire interest in real property other than retained rights to subsurface oil, gas, or other minerals; (2) a remainder interest; or (3) an easement, restrictive covenant, or similar property restriction granted in perpetuity. The contribution must be in perpetuity and further at least one of the following “conservation purposes”—preservation of land areas for outdoor recreation, education, or scenic enjoyment; preservation of historically important land areas or structures; or the protection of plant, fish, and wildlife habitats or similar natural ecosystems.

To obtain the deduction, there must be legally enforceable restrictions that prevent you from using your retained interest in the property in a way contrary to the intended conservation purpose. The donee organization must be prohibited from transferring the contributed interest except to other organizations that will hold the property for exclusively conservational purposes. If you retain an interest in subsurface oil, gas, or minerals, surface mining must generally be specifically prohibited. However, there is a limited exception where the mineral rights and surface interests have been separately owned since June 12, 1976. A deduction will be allowed if the probability of surface mining is so remote as to be considered negligible.

The exception does not apply if you are related to the owner of the surface interest or if you received the mineral interest (directly or indirectly) from the surface owner.



### Donating Vacation Home Use Not Advisable

To raise funds, a charitable organization may ask contributors who own vacation homes to donate use of the property which the charity then auctions off to the public. Be warned that if you offer your home in this way you will not only be denied a charitable deduction for your generosity, but you may jeopardize your deduction for rental expenses. A deduction is not allowed for giving a charity the free use of your property. See the following Example.

### E X A M P L E

To help a charity raise money, one owner allowed the charity to auction off a week's stay in his vacation home, and the highest bidder paid the charity a fair rental. The IRS ruled that not only was the owner's donation not deductible, but the one week stay by the bidder was considered personal use by the owner for purposes of figuring deductions for rental expenses. True, if the owner had directly rented the property to the bidder, the bidder's payment of a fair rental value would have been counted as a rental day and not a personal use day. However, the donation for charitable use is not a business rental, and the bidder's rental payment to the charity is not considered a payment to the owner.

Furthermore, the bidder's use of the home pushed the owner over the personal use ceiling, which in turn prevented him from deducting a rental loss. A rental loss may not be claimed if personal use of a home exceeds the greater of 14 days and 10% of the number of days the home is rented at fair rental value (¶29.20). Here, the owner personally used the home for 14 days and rented the home for 80 days. The rental expenses exceeded rental income. If the bidder's use of the home was not considered his personal use, the owner could have deducted the loss because his personal use did not exceed the 14-day limit (which was more than 10% of the 80 rental days). However, by adding the bidder's seven days of use to the owner's 14 days, the resulting 21 days of personal use exceeded the 14-day ceiling.

## ¶14.11 Life Insurance

You may deduct the value of a life insurance policy if the charity is irrevocably named as beneficiary and you make both a legal assignment and a complete delivery of the policy. A deduction may be disallowed where you reserve the right to change the beneficiary.

The amount of your deduction generally depends on the type of policy donated. Your insurance company can furnish you with the information necessary to calculate your deduction. In addition, you may deduct premiums you pay after you assign the policy.

**Deducting premium payments on donated policy.** If you assign a life insurance policy to a charity and continue to pay the premiums, you generally may deduct the premiums. However, in states where charities do not have an "insurable interest" in the donor's life, the IRS may challenge income tax and gift tax deductions for the premium payments. The IRS took this position in a private ruling interpreting New York law. In response, New York amended its insurance code to allow individuals to buy a life insurance policy and immediately transfer it to a charity. The IRS then revoked the earlier ruling but it did not announce a change in its position. Thus, the IRS may challenge premium deductions of donors in other states where a charity's insurable interest is not clearly provided by state law.

## ¶14.12 Form 8283 and Written Appraisal Requirements

Attach Form 8283 to your Form 1040 if the total deduction claimed for all of your donations of property in 1996 exceeds \$500. The IRS may disallow your deduction if you fail to attach Form 8283.

If you are claiming a deduction exceeding \$5,000 for an item, or for a group of similar items (such as coins, stamps, books, paintings, or buildings), you need a written appraisal, which must be summarized in Part I, Section B of Form 8283. The appraiser must complete Part III in Section B of Form 8283. However, you do not need a written appraisal for publicly traded securities and nonpublicly traded stock of \$10,000 or less. Keep the appraisal for your records unless you donate art valued at \$20,000 or more. In that case, you must attach a complete copy of the appraisal to Form 8283. Furthermore, you may be asked by the IRS to submit a color photograph (8" x 10") or a slide of the art (4" x 5").

If you need an appraisal, get one from an unrelated professional no earlier than 60 days before your gift, and you must receive it by the due date (including extensions) of your return on which you claim the deduction.

For property donations exceeding \$5,000, the donee organization must acknowledge the receipt of the property on Part IV, Section B of Form 8283.

**Penalty for overvaluation.** You may be penalized for a substantial overvaluation of donated property; *see* ¶14.16.

**Appraisal fees.** A fee paid to an appraiser is not considered a charitable deduction but is deductible as a "miscellaneous" expense subject to the 2% adjusted gross income floor; *see* ¶19.25.

**Charity reports transfers within two years.** If the charity sells or otherwise disposes of the appraised property within two years after your gift, it must notify the IRS on Form 8282 and send you a copy.

### Form 8283 — Worksheet

**Section A—List in this section only items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also, list certain publicly traded securities even if the deduction is over \$5,000 (see instructions).**

**Part I Information on Donated Property**—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) Description of donated property
A	Red Cross City, State 11XXXX	Blankets and used clothing
B	Community Food Center City, State 11XXXX	Station Wagon — 1998 (8 cylinders, 100,000 miles)
C		
D		
E		

**Note:** If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (d), (e), and (f).

(c) Date of the contribution	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) Fair market value	(h) Method used to determine the fair market value
A 7-24-96				\$ 50.00	thrift shop value
B 11-18-96	4-6-88	Purchase	\$15,000	2,500.00	Blue Book value
C					
D					
E					

The IRS could compare the selling price received by the charity with the value you claimed on Form 8283. Reporting on Form 8282 is not required by the charity if in Part II, Section B of Form 8283 you indicated that the appraised value of the item was not more than \$500. Similar items such as a collection of books by the same author, stereo components, or place settings of silverware may be treated as one item. Reporting is also not required for donated property that the organization uses or distributes without consideration, if this use furthers the organization's exempt function or purpose.

## ¶14.13 Business Inventory

Self-employed business owners generally may not deduct more than cost for donations of inventory. If a charitable deduction is claimed, costs incurred in a year prior to the year of donation must be removed from opening inventory and excluded from the cost of goods sold when figuring business gross profit for the year of the contribution.

No contribution deduction is allowed for a gift of merchandise which was produced or acquired in the year donated. Instead, the cost is added to the cost of goods sold to figure gross profit for the year of the contribution. Business deductions are not subject to the percentage limitation applied to donations.

## ¶14.14 Donations Through Trusts

Outright gifts are not the only way to make deductible gifts to charities. You may transfer property to a charitable income trust or a charitable remainder trust to provide funds for charity.

A charitable income trust involves your transfer of property to a trust directed to pay income to a charity you name, for the term of the trust, and then to return the property to you or to someone else.

A charitable remainder trust is one which provides income for you or another beneficiary for life, after which the property passes to a charity.

Trust arrangements require the services of an experienced attorney who will draft the trust in appropriate form and advise you of the tax consequences.

**Deductions for gifts of income interests in trust.** Current law is designed to prevent a donor from claiming an immediate deduction for the present value of trust income payable to a charity for a term of years. In limited situations, you may claim a deduction if either: (1) You give away all of your interests in the property to qualifying (¶14.1) organizations. For example, you put your property in trust, giving an income interest for 20 years to a church and the remainder to a college. A deduction is allowed for the value of the property. Or (2) you create a unitrust or annuity trust, and are taxed on the income. A unitrust for this purpose provides that a fixed percentage of trust

assets is payable to the charitable income beneficiary each year. An annuity trust provides for payment of a guaranteed dollar amount to the charitable income beneficiary each year. A deduction is allowed for the present value of the unitrust or annuity trust interest.

Because income remains taxable to the grantor, alternative (2) will probably not be chosen, unless the income of the trust is from tax-exempt securities. If such a trust is created, a tax may be due if the donor dies before the trust ends or is no longer the taxable owner of trust income. The law provides for a recapture of a proportion of the tax deduction, even where the income was tax exempt.

**Charitable remainder trusts.** A charitable deduction is allowable for transfers of property to charitable remainder trusts only if the trust meets these requirements: The income payable for a non-charitable income beneficiary's life or a term of up to 20 years must be guaranteed under a unitrust or annuity trust. If a donor gives all of his or her interests in the property to the charities, the annuity or unitrust requirements need not be satisfied. The value of the charitable deduction allowable for a gift in trust is determined by IRS tables.

**Life income plans.** A philanthropy may offer a life income plan (pooled income fund) to which you transfer property or money in return for a guaranteed income for life. After your death, the philanthropy has full control over the property. If you enter such a plan, ask the philanthropy for the amount of the deduction that you may claim for the value of your gift.

## ¶14.15 Records Needed To Substantiate Your Contributions

The type of records you must keep to substantiate your donations generally depends on their amount and whether you are contributing cash or property. The requirements are stricter for contributions of \$250 or more than for smaller contributions.

**Contributions under \$250.** A cancelled check or a dated receipt is proof of a donation under \$250. For a property donation, your receipt should contain a description of the property. You should keep records showing the fair market value of the property and your cost basis.

**You need a receipt and explanation from the charity for contributions of \$250 or more.** A written receipt or acknowledgment is necessary to prove charitable contributions of \$250 or more. You may not rely on a cancelled check to document a cash contribution of \$250 or more. The receipt requirement does not apply if the donation is less than \$250, but if the contribution exceeds \$75, you must be given a disclosure statement from the charity estimating the value of any benefits you received in return for the donation.

The IRS exempts from the receipt requirement grantors of a charitable lead trust, charitable remainder annuity trust, or charitable remainder unitrust. Since a specific charity does not have to be designated as beneficiary at the time the trust transfer is made, there may be no organization available to provide a receipt.

**Content of receipt.** A receipt for a donation of \$250 or more may be a letter, form, or postcard. If you gave cash, the amount of the donation must be shown. If you gave property, the property must be described in the receipt or acknowledgment, but the charity does not have to value it.

The receipt must state whether or not you have received any goods or services from the charity in exchange for the contribution. If you have, the receipt must include a statement describing such benefits and estimating their value. However, “token” items and certain membership benefits, as described in ¶14.3, do not have to be described or valued. There is also an exception if the only benefits received are “intangible” religious benefits, such as admission to religious ceremonies; these do not have to be described or valued, but the statement must indicate that they are the sole benefits provided.

**Payments throughout the year.** For purposes of the \$250 receipt threshold, each payment is generally considered separate. Thus, for small donations made during the year, you do not have to obtain a receipt even if they total \$250 or more.

If contributions are made by payroll deductions from your wages, the amount withheld from each paycheck is treated separately. A receipt is not required unless withholding on a single paycheck is at least \$250. A pay stub or Form W-2 from the employer indicating the amount of a single withholding over \$249 is considered a valid “receipt”; a pledge card or other document from the charity must state that you have not received benefits in exchange for the payroll deduction contribution.

**Deadline for 1996 donation receipts.** For a 1996 contribution, the deadline for obtaining a receipt is the date you file your 1996 return. If you file after the filing due date or extended due date, get the receipt by the due date or extended due date.

**A charity must provide a disclosure statement if you contribute more than \$75 and receive benefits.** If you contribute more than \$75 but less than \$250 to a charity, you do not have to get a written receipt but the charity is required to give you a “disclosure” statement that estimates the value of any benefits you received, such as concert tickets or books. The statement will tell you to deduct only the excess of your contribution over the value of the benefits. If a required disclosure statement is not provided when contributions are solicited, it must be provided when you make a contribution exceeding \$75.

## ¶14.16 Penalty for Substantial Overvaluation of Property

If the IRS disallows a portion of your claimed deduction for appreciated property on the grounds that you have overvalued it, you may be subject to a penalty as well as additional tax. The penalty applies only for substantial overvaluations that result in a tax underpayment exceeding \$5,000. There are two levels of penalty, depending on the extent of overvaluation:

### PROVING YOUR DONATIONS

If you contribute—	You need—
\$75 or less	A cancelled check or receipt from the charity.
More than \$75 but less than \$250	A cancelled check or receipt from the charity. If you received benefits, the charity is required to give you a “disclosure” statement that estimates the value of any benefits you received, such as concert tickets or books. The statement will tell you to deduct only the excess of your contribution over the value of the benefits. If a required disclosure statement is not provided when contributions are solicited, it must be provided when you make a contribution exceeding \$75. The disclosure statement is not required if the only benefits you receive are “token items” as discussed in ¶14.3. Nor is it required where you contribute to a religious organization and the only benefits you receive are “intangible religious benefits”. An example of an intangible religious benefit would be admission to religious ceremonies. A Congressional committee report also suggests that tuition for wholly religious education that does not lead to a recognized degree would qualify.
\$250 or more	A receipt or acknowledgment from the charity. You may not rely on a cancelled check to document a cash contribution of \$250 or more. A receipt is also required for a donation of property if you are claiming a deduction of \$250 or more. If you received any goods or services from the charity in exchange for the contribution, the receipt generally must estimate their value. The deadline for obtaining receipts is the date you file your return. If you file after the filing due date or extended due date, get the receipt by the due date or extended due date. Where the contribution is \$250 or more, and both the receipt requirement and the disclosure requirement apply, the charity may satisfy both requirements with the same document.  If your total deduction for all property donations exceeds \$500, you must report the contributions on Form 8283. If you are not allowed to deduct fair market value for a property donation under the rules of ¶14.6, you must attach a statement to Form 8283 explaining the reduction for the appreciation. For property deductions exceeding \$5,000, you need a written appraisal as discussed in ¶14.12.

**20% penalty.** If the value claimed is 200% or more of the correct amount and results in a tax underpayment exceeding \$5,000, the penalty is 20% of the resulting tax underpayment.

**40% penalty.** If the value claimed is 400% or more of the correct amount and results in a tax underpayment exceeding \$5,000, the penalty is 40% of the resulting underpayment.

In determining whether the 200% or 400% overvaluation threshold is met, each property claimed on your return is considered separately. Thus, if on the same return you overvalue Property A by 180% and Property B by 250%, the penalty may be imposed only against Property B, even though on an aggregate basis the overvaluation for both properties is at least 200%.

If there is an overvaluation of at least 200% for more than one property, the resulting tax underpayments are combined to determine if the \$5,000 underpayment threshold has been met. For example, Property C is overvalued by 300%, resulting in a \$1,000 tax underpayment, and Property D is overvalued by 400%, for a tax underpayment of \$4,500. As the total underpayment exceeds \$5,000, both overvaluations are subject to the penalty.

**Reliance on appraisal may avoid penalty.** Even though you have an overvaluation subject to the penalty, you may avoid it under a reasonable cause exception if you relied on an appraisal, but only if the appraisal and the appraiser who prepared it were qualified under IRS regulations and, in addition, you made a good faith, independent investigation of the value of the property.

A professional appraiser who knowingly overvalues charitable deduction property is subject to a \$1,000 penalty.

**Advance valuation of art from IRS.** To protect against the possibility of a valuation dispute that could lead to a penalty where you are claiming a deduction of at least \$50,000 for a work of art, you may request a valuation from the IRS prior to the time you file. See ¶14.9 for obtaining the IRS valuation.

## ¶14.17 Ceiling on Charitable Contributions

Unless you make donations that are very substantial in relation to your adjusted gross income (Line 32, Form 1040), you do not have to be concerned with the deduction ceilings discussed in this section. For cash contributions, the deduction ceiling is generally 50% of adjusted gross income, but in some cases a 30% limit applies. For property donations, the deduction limit is generally 30% of adjusted gross income although it sometimes is 50% or even 20%. As detailed below, the specific limit for each donation depends on whether it is made to a “50% limit organization” and whether it is capital gain property. Where you have made contributions subject to different ceilings, the ceilings are applied in a specific order and are subject to an overall ceiling of 50% of adjusted gross income. If your deduction is limited by any of the ceilings, a five-year carry-over is allowed for the excess; see ¶14.18.

Even if none of your charitable contributions are subject to the ceilings, your overall charitable deduction is subject to the 3% reduction to itemized deductions if your 1996 adjusted gross income exceeds \$117,950 (\$58,975 if married filing separately); see ¶13.8.

**Volunteer expenses.** The deduction ceiling for unreimbursed expenses you incur doing volunteer work for a charity (¶14.4) is 50% of adjusted gross income if your services were for a 50% limit organization such as a church or college (see the list below), or 30% of adjusted gross income if the services were on behalf of an organization other than a 50% limit organization.

**30% limit for contributions for the use of an organization.** If a donation is treated as *for the use of*, rather than directly *to*, any organization, it is deductible under the 30% ceiling described below for contributions to organizations that are *not* 50% limit organizations.

This 30% ceiling applies to a charitable unitrust or annuity trust income interest that is deductible under the rules of ¶14.14. A charitable remainder trust transfer is also subject to the 30% limit if the trust provides that after the death of the income beneficiary, the property is to be held in the trust for the benefit of the charity, rather than distributed to the charity.

Deductible expenses for supporting a student in your home (see ¶14.5) are considered to be for the use of a charitable organization and thus subject to the 30% ceiling for contributions to organizations that are *not* 50% limit organizations.

## CONTRIBUTIONS TO 50% LIMIT ORGANIZATIONS

Organizations in the 50% limit category include churches, schools, publicly supported charities, and private foundations in the list below. Cash contributions to such organizations are deductible up to 50% of adjusted gross income and contributions of capital gain property held long term generally are deductible up to 30% of adjusted gross income.

The 50% deduction ceiling also applies to donations to the United States, Puerto Rico, a U.S. possession, a state, a political subdivision of a state or U.S. possession, or an Indian tribal government.

**50% ceiling.** Contributions of cash, ordinary income property, and capital gain property held short term are deductible up to 50% of adjusted gross income if made to the following types of charitable organizations:

Churches, synagogues, mosques, and other religious organizations.

Schools, colleges, and other educational organizations that normally have regular faculties and student bodies in attendance on site.

Hospitals and medical research organizations associated with hospitals.

Government-supported or publicly supported foundations for state and municipal universities colleges.

Religious, charitable, educational, scientific or literary organizations that receive a substantial part of their financial support from the general public or a government unit. Libraries, museums, drama, opera, ballet and orchestral societies, community funds, the American Red Cross, Heart Fund, and the United Way are in this category. Also included are organizations to prevent cruelty to children or animals, or to foster amateur sports (provided they do not provide athletic facilities or equipment).

Private operating foundations.

Private non-operating foundations that distribute their contributions annually to qualified charities within 2 ½ months after the end of their taxable year.

Private non-operating foundations that pool donations and allow donors to designate the charities to receive their gifts, if the foundation pays out all income within 2 ½ months after the end of the tax year.

Organizations that normally receive more than one-third of their support from the general public or governmental units.

**30% ceiling for capital gain property held long term.** The deduction ceiling is generally 30% (not 50%) of adjusted gross income where you donate to a 50% limit organization property that would have resulted in long-term capital gain had you sold it at fair market value.

The 30% ceiling applies where the fair market value of the property is deductible under the rules of ¶14.6. This includes donations of appreciated securities and real estate held long term (more than one year). It also includes donations of appreciated tangible personal property (such as furniture or art) held long term where the organization's use of your gift is directly related to its tax-exempt charitable purposes.

However, you may elect to apply the 50% ceiling instead of the 30% ceiling to such property donations if you reduce the fair market value of the property by the appreciation; *see* ¶14.19.

If you donate tangible personal property held long term that is *not* used by the organization for its tax-exempt charitable purposes, so that your deduction must be reduced for the appreciation (¶14.6), the reduced amount is deductible under the 50% ceiling.

## CONTRIBUTIONS TO ORGANIZATIONS THAT ARE NOT 50% LIMIT ORGANIZATIONS

If a contribution is made to a qualifying organization that is *not* in the above list of 50% limit organizations, a 30% or 20% deduction ceiling applies. Organizations in this category include veterans' organizations, fraternal societies, nonprofit cemeteries and private non-operating foundations that do not meet the payout requirements for 50% limit status.

The 30% limit applies to contributions of cash, ordinary income property, and capital gain property held short term. The 20% limit applies to contributions of capital gain property held long term (more than one year). However, the actual ceiling may be less than 30% or 20% of adjusted gross income where in the same year you have made contributions to 50% limit organizations. In that case, follow the rules in Steps 2 and 4 of the following section on applying the deduction ceilings.

## APPLYING THE DEDUCTION CEILINGS

The various deduction ceilings are applied in a specific order, with the total deduction for the year limited to 50% of adjusted gross income. Check above for the ceilings that apply to your donations and then apply the ceilings in the following order. *See* ¶14.19 for carryover rules if a portion of your deduction is barred by the deduction ceilings.

1. 50% deduction ceiling for contributions to 50% limit organizations.

2. 30% of adjusted gross income ceiling for contributions to organizations that are not 50% limit organizations.

If any contributions to 50% limit organizations were made, including donations of capital gain property that are subject to the 30% ceiling under Step 3 below, this Step 2 ceiling is the lesser of (1) 30% of adjusted gross income and (2) 50% of adjusted gross income minus the contributions to the 50% limit organizations.

3. 30% of adjusted gross income ceiling for contributions of capital gain property to 50% limit organizations.

If contributions qualifying for the 50% ceiling (Step 1) were made, your deduction for these 30% limit contributions is the lesser of (1) 30% of adjusted gross income and (2) 50% of adjusted gross income minus the contributions qualifying for the 50% ceiling.

4. 20% of adjusted gross income ceiling for contributions of capital gain property subject to organizations that are not 50% limit organizations.

If contributions are deductible under any of the other ceilings (Steps 1–3), you may deduct contributions subject to the 20% ceiling only to the extent that there is any adjusted gross income remaining under the overall 50% adjusted gross limit.

## E X A M P L E S

1. Linda Jones in 1996 contributes to a church \$22,000 in cash and land held long term valued at \$35,000. Her adjusted gross income is \$100,000, so the total deduction for the year may not exceed \$50,000 under the 50% overall limit. Since the \$22,000 cash contribution subject to the 50% ceiling is considered first, the deduction for the land (subject to the 30% ceiling under Step 3 above) is limited to \$28,000, the difference between the \$50,000 overall limit and the \$22,000 cash gift. Jones may carry over the unused \$7,000 donation attributable to the land.

2. Earl Smith in 1996 has an adjusted gross income of \$100,000. He contributes land worth \$40,000 to a college, deductible under the 30% ceiling of Step 3 above. He also contributes \$30,000 in cash to a non-operating private foundation subject to the 30% ceiling of Step 2 above. The 30% limitation for cash gifts to non-operating private foundations is applied before the 30% limitation applicable to gifts of capital gain property to public charities. The deduction for the cash gift is reduced to \$10,000 (50% of \$100,000 adjusted gross income, or \$50,000, minus \$40,000 gift to college). The deduction for the land is limited to \$30,000 (30% of \$100,000). Accordingly, Smith's charitable contribution deduction for 1996 is \$40,000 (\$10,000 + \$30,000).

Smith is allowed to carry over (¶14.18) the amounts disallowed by the ceilings: \$20,000 (\$30,000 – \$10,000) for the cash gift and \$10,000 (\$40,000 – \$30,000) for the land.

## ¶14.18

### Five-Year Carryover for Excess Donations

If you make donations that are not deductible because they exceed the 50%, 30%, or 20% of adjusted gross income ceilings discussed in ¶14.17, you may carry over the excess over the next five years. In each carryover year, the original percentage ceiling applies. For example, where contributions of appreciated long-term intangible personal property or real estate (or tangible personal property put to a related use by the charity) exceed the 30% ceiling for capital gain property (¶14.17), the excess remains subject to the 30% ceiling in the carryover years.

In any carryover year, you must first figure your deduction for contributions in the current year under the applicable 50%, 30%, or 20% ceilings. For each category of property carried over, the carryover contributions are deductible only after the deduction for current year donations is figured. The total deduction in the carryover year, for both current year and carryover contributions, cannot exceed 50% of adjusted gross income for the carryover year.



#### Project Your Income

When planning substantial donations that may exceed the annual ceiling, make a projection of your income for at least five years. Although the carryover period of five years will probably absorb most excess donations, it is possible that the excess may be so large that it will not be completely absorbed during the year of the contribution and the five-year carryover period. It is also possible that your income may drop in the future so that you cannot adequately take advantage of the excess.

#### EXAMPLE

In 1996, you contribute to a university stock held long term with a fair market value of \$19,000. The contribution is subject to the 30% ceiling for capital gain property (¶14.17). You also have a \$2,000 carryover from 1995 for a cash gift to your church which in 1996 remains subject to the 50% ceiling. Your 1996 adjusted gross income is \$40,000. Under the 30% ceiling, the deduction for the contribution of stock is limited to \$12,000 (30% of \$40,000 adjusted gross income). Since the overall deduction limit is \$20,000 (50% of \$40,000 adjusted gross income), the \$2,000 carryover from 1995 is fully deductible. The total deduction on your 1996 return is \$14,000 (\$12,000 plus \$2,000 carryover). You carry over to 1997 the \$7,000 balance from the gift of stock that could not be deducted in 1996 because of the 30% ceiling.

## ¶14.19

### Election To Reduce Property Gift Appreciation

Although the 30% ceiling generally applies to long-term intangible property (such as securities) and real estate contributed to 50% limit organizations (see ¶14.17), you may elect the 50% ceiling, provided you reduce the fair market value of the property by 100% of the appreciation on all such donations during the year. The reduction also applies to donations of tangible personal property related in use to the organization's charitable function. In most cases, this election will be made only where the amount of appreciation is negligible. Where there is substantial appreciation, the increase in the deduction may not make up or exceed the required 100% reduction, which allows you to claim a deduction only for your cost basis in the property. If the election is made in a year in which there are carryovers of capital gain property subject to the 30% ceiling, the carryovers are subject to reduction; *see* IRS Publication 526.

The election of the 50% ceiling is made by attaching a statement to your original return or amended return filed by the original due date. Even where no formal electing statement is made, claiming a deduction without the appreciation in order to come within the 50% ceiling is treated as an election. A formal or "informal" election is not revocable unless a material mistake is shown. A revocation based on a reconsideration of tax consequences is not considered sufficient grounds.